



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS

425 Eye Street N.W.

ULLB, 3rd Floor

Washington, D.C. 20536

C1

File: LIN-00-011-50790

Office: Nebraska Service Center

Date:

NOV 27 2000

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:

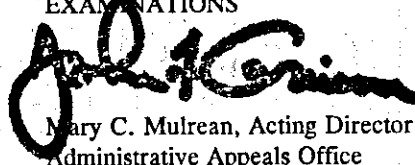
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Mary C. Mulrean, Acting Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a pastor. The director denied the petition determining that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience. The director also found that the petitioner had failed to establish that the prospective occupation is a religious occupation.

On appeal, the petitioner argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue to be examined is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on October 12, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from October 12, 1997 to October 12, 1999.

In a letter dated August 23, 1999, [REDACTED] of the [REDACTED] Baptist Church stated that the beneficiary "became the pastor of the [REDACTED] Baptist Church Korean Mission in December of 1998."

On April 3, 2000, the director requested that the petitioner submit evidence of the beneficiary's work experience during the two-year period prior to filing. In response, the petitioner stated that, from February 1997 to November 1998, the beneficiary "taught in Sunday school ministry at the [REDACTED] Baptist Church in [REDACTED] Kentucky." The petitioner submitted a letter from the pastor of the Southside Baptist Church who indicated that the beneficiary "taught in our Sunday School ministry from February of 1997 until November of 1998." The petitioner also submitted a photocopy of a diploma awarded to the beneficiary by the New Orleans Baptist Theological Seminary on December 13, 1996. The petitioner also submitted a photocopy of a "certificate of ordination" awarded to the beneficiary on August 26, 1998.

On appeal, the petitioner states that the beneficiary has volunteered his services at the church while attending the Southern Baptist Theological Seminary. The petitioner submits a letter from a representative of the seminary who asserts that the beneficiary has been a full-time theology student since January 1997. In Matter of Z-, 5 I&N Dec. 700 (Comm. 1954), the Commissioner held that continued study by an ordained member of the clergy was not interruptive of his or her continuous practice of a religious vocation. The beneficiary in this case was not ordained until August 26, 1998, and has never been engaged in a religious vocation as defined in this proceeding. Accordingly, any period of time spent studying at the seminary does not constitute continuous work experience in a religious occupation. As the beneficiary has been a full-time student throughout the qualifying period, it is evident

that he does not meet the requirements at 8 C.F.R. 204.5(m)(1). The petitioner has not established that the beneficiary was continuously engaged in a religious occupation from October 12, 1997 to October 12, 1999. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

The next issue to be examined is whether the prospective occupation is a religious occupation.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The regulation does not define the term "traditional religious function" and instead provides only a brief list of examples. The examples listed reflect that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative, humanitarian, or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In a letter dated August 14, 1999, the secretary at the Korean Baptist Church of Columbus stated that "we will gladly invite [the beneficiary] as our full time pastor." On April 3, 2000, the

director requested that the petitioner submit additional information. In response, the petitioner listed the beneficiary's duties as follows:

- (1) Develop and lead a ministry of the Columbus Korean Baptist Church to Korean-American;
- (2) Supervise the Sunday School program and teach Sunday School to the adult congregation;
- (3) Preach and conduct worship services and Bible study in both Korean and English; assist and encourage Korean-Americans to participate in English speaking worship services or the Columbus Korean Baptist Church;
- (4) Work with the Church staff and leadership to achieve assimilation of the Korean American members of our community into the worship and ministry of the Southern Baptist Church.

The petitioner submitted a photocopy of a "certificate of ordination" awarded to the beneficiary on August 26, 1998.

On appeal, the petitioner reiterates the beneficiary's prospective duties. The petitioner has not demonstrated that the prospective occupation requires any formal theological education or specific religious training. While the beneficiary has attended seminary, his course of study has not been disclosed, and there is no evidence that this education is a prerequisite to the proffered job. Further, there is no indication of what was required of the beneficiary prior to his receipt of the certificate of ordination. The simple issuance of a document entitled "certificate of ordination," which is not based on specific theological training or education, does not prove that an alien is qualified to perform the duties of a minister or pastor. See Matter of Rhee, 16 I&N Dec. 607, 610 (BIA 1978). As such, the petitioner has failed to establish that any devout member of the congregation would be unable to perform the duties of the prospective occupation. The petitioner has, therefore, failed to establish that the prospective occupation is a religious occupation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.